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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,313	11/28/2000	Anthony D. Gonzalez	682.0021USU	6496

7590

09/02/2003

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 09/02/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

09

Application No. 724313	Applicant(s) GONZALEZ et al
Examiner M. C. Lowy	Group Art Unit 1616
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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/13/03
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-44 is/are pending in the application.
- ☐ Of the above claim(s) 35-42 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-34, 43, 44 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 9
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of amendment, RCE/suspension, request for time an IDS.

Claim 28 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Unless applicant does not distinguish emulsion, suspension, and solutions, this mix of propellant and water is not a solution.

This application contains claims directed to the following patentably distinct species of the claimed invention: species of repellent: Deet, 1r 3535;...methane diol.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-34, 43 and 44 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

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are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with attorney Robert Dean on 8/13/03 a provisional election was made traverse to prosecute the invention of species of IR 3535, claim 36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 35, 37-42 stand to species withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 is a method; please write to so indicate.

Claims 1-12, 16-19, 25-30, 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Dohara et al 5055299.

The rejection of record is maintained.

Dohara says nothing about who or where aerosols are applied, and includes known repellents within the insecticidal pyrethroidal compounds. The PH is as low as 7, utilizing sodium benzolite-benzoic acid buffers (col.2, lines 32, 60) for example, so would be suitable when applied to skin, with the active at 0.01-2%.

Claims 1-9, 16, 20-22, 24, 26, 27, 32, 33, 34 and 44 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mailander-330391.

The rejection of record is maintained.

The compositions and methods of skin application are applicable to humans, as indicated in prior actions, and DEET and repellents are clearly stated (col.8, top).

Claims 1-11, 13, 15, 16, 20-24, 26, 27, 32-34 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Vlasblon-5565208.

The rejection of record is maintained.

The instant invention makes no distinction or provide definitions between emulsion, suspension or solution, only requiring aerosol dispensing. Vlasblom provides a sprayable liquid insect repellent, inclusive of aqueous solutions (col.2, lines 39-46) able to be used as aerosol, we see no distinction between emulsified droplets dispersed droplets or suspended droplets.

Claims 1-34, 43, 44 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chaussee-4970220.

The rejection of record is maintained.

Here too, the instant compositions and methods, are disclosed, and aerosol dispersing is shown, as are alcohols (col.4, lines 39-47) and propellants (col.7, lines 35-39). Please note that applicants not chaussee, characterizes chaussee as emulsions. Again, applicant makes no distinction in the specification. Chaussee, however, states the compositions are solutions (col.3, lines 65,66) or other form (obviously applicants dispersion, suspension, suitable for aerosol use.

Claims 1-8, 12, 16, 20-22, 24, 26, 27, 32-34, 43, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Neumiller-5145604.

Here, too emulsions are shown as suspensions or dispersions (fig. 1-3, col.1, lines 9-15, col.3, lines 33-40) for aerosol use as insect repellent (example 10, 11, 15) applied to human skin in effective amounts of DEET-15% to repel mosquitoes (table, col.13) as suspension or dispersion. Propellants include propane/butane; at about 4% at example 10 as Volatile component, with glycerol-1.5% as non-voc; up to 6% non-volatile glycerol or polyol are contemplated (col.5, line 60-line 2, col.6). Water is added to volume Ethanol is utilized (col.5, lines 46-50). Propellants can be about 2.25% (col.5, lines 18-21).

Claims 1, 4-8, 12-14, 20-22, 24, 25, 31, 34, 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Kurz et al 6306905.

Aerosolo-(col.3, lines 28-32) of solutions of the instant insect repellent (col.2, lines 54-59) of IR 3535, with sunscreen (line 65,66, col.2) and film formers (col.3 lines 14-17) with water and volatile propellants are shown as composition applied to subjects

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(claim 8)-people are addressed, with skin (col.1, lines 14-20, 32-38) methods at claim 8. See claims 3-10—30% IR 3535. Non-vocs' are used, buffer and sunscreens (col.3, at 0.5-10%), as is water examples ethanol can be 15% (examples).

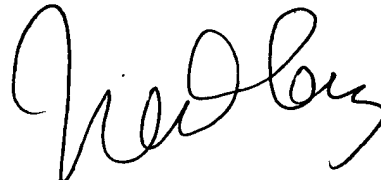
Applicant's arguments filed 5/11/03 have been fully considered but they are not persuasive. Applicants arguments, where convincing, have resulted in withdrawal of rejections; otherwise are considered in continuing rejections and kurz, Newmiller.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd
August 27, 2003



NEIL S. LEVY
PRIMARY EXAMINER